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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	**CC Docket No. 96-45**
Universal Service	)	**(Report to Congress)**

Comments of the New Mexico Attorney General Concerning Consistency with the Telecommunications Act of 1996

Pursuant to Public Notice DA 98-2 of the Common Carrier Bureau (January 5, 1998), the Attorney General of the State of New Mexico (Attorney General) respectfully submits comments concerning the consistency of Federal Communications Commission (FCC) rules in the above docket with the federal Telecommunications Act of 1996 (the Act). The Attorney General represents the interests of residential ratepayers in the state of New Mexico.

The Attorney General submits that the Commission's order mandating that the federal Universal Service Fund (USF) support only 25% of a state's rural high-cost need will create seriously adverse consequences to states that are not densely populated and will violate both the spirit and the letter of the Act. Furthermore, the Attorney General believes that, for consistency with the Act, local exchange carriers should be required to use the USF contributions to lower rates for basic local telephone service in high-cost areas rather than lowering the rates for other telephone services.

I. <u>Percentage of Federal USF Support for High-Cost Services Should Be Significantly Greater Than 25%</u>

According to Attachment A of the Petition for Reconsideration and Clarification of the Vermont Public Service Board and the Vermont Department of Public Service (VPSB) in this docket (a copy of Attachment A is attached to these comments), it would take a surcharge of approximately 26% on telecommunications services in New Mexico in order to make up for the USF revenue lost under the Commission's rule that provides for only 25% support for high-cost need from the USF. Such a surcharge, if applied uniformly to telecommunications services, would amount to a 26% rate increase for basic local exchange service throughout New Mexico on top of any increase that could potentially result from a successful attempt by a local exchange company to "rebalance" residential and business rates. While the Attorney General has been unable to verify the accuracy of the VPSB figures, due to a limitation of resources, it stands to reason that the current federal USF support to high-cost areas of New Mexico would be substantially reduced, given the fact that considerably more than 25% of the cost in most high-cost areas of New Mexico is currently subsidized by federal USF mechanisms.

The consequence of such a rate increase would be especially severe in New Mexico, which is one of the poorest states in the country and which has a significantly lower subscriber rate than the national average. This consequence would be totally contrary to the mandate of the Act to "preserve and advance universal service." Indeed, the Commission's order to allocate only 25% of the high-cost need to the federal USF would result in not only a failure to advance universal service, but also a failure to <u>preserve</u> universal service. If states without the resources to do so are charged with the greatest burden of ensuring the preservation and advancement of universal service, the movement toward universal service will take a giant step backwards. Furthermore, given the renewed vitality of the Tenth Amendment to the United States Constitution, see Printz v. United States, Supreme Court case No. 95-1503 (June 27, 1997), there is a decreasing likelihood that Congress or the Commission will be able to require the states to ensure the preservation of universal service by subsidizing universal service with general state revenue.[1]

In addition to violating the Act, the Commission's mandate regarding the allocation of the high-cost need runs contrary to a policy statement in the Commission's Report and Order in this docket: that the Commission wants to "avoid action that directly or indirectly raises the price of the basic residential telephone service that guarantees access to the local exchange network." Report and Order, para. 16. Clearly, a significant rate increase in basic local telephone service would jeopardize the already-tenuous affordability of that service.

The Commission correctly observes that "in light of the significant disparity of income levels throughout the country, per-capita income of a local or regional area, and not a national median, should be considered in determining affordability." Id., para. 115. Therefore, even if basic telephone service is generally affordable today, see id., para. 2, it may not be generally affordable in relatively poor, largely rural states such as New Mexico. Under a 25%-allocation regime, in comparison with the much greater federal USF allocation for many rural areas under the current regime, local basic telephone

[1] Printz stands for the principle that an unfunded federal mandate to state officials to implement a federal regulatory program is unconstitutional, unless the federal government is prepared to preempt the states'

service will only become less affordable to many residential consumers. The Attorney General, therefore, believes that the mechanism established by the Commission to support universal service, even when taken together with possible state mechanisms (over which the Commission probably has no control), would provide insufficient support in violation of Section 254(b)(5) of the Act.

The Attorney General also believes that the Commission's new mandate for the federal USF violates Section 254(b)(3). If, under the new regime, the rates in rural New Mexico for basic local exchange service remain "reasonably comparable to rates charged for similar services in urban areas" in New Mexico, Section 254(b)(3), as pointed out above, those rates will not be reasonably comparable to those charged in urban (or rural) areas in the more densely populated states. Because the comparability of rates is to apply to "[c]onsumers in all regions of the Nation", id. (emphasis added), and given the spirit of the Act and the spirit of Section 254 in particular, Congress could not have intended that the comparability of rates between rural and urban areas is to be achieved only within any given state.

For the foregoing reasons, the mandated 25% allocator will provide insufficient support for many high-cost areas in New Mexico and throughout the United States, and is inconsistent with the Act.

II. Federal USF Contributions Should Be Used for Lowering Rates for Basic Local Telephone Service in High-Cost Areas

The Attorney General supports the Comments of National Association of State Utility Consumer Advocates Concerning Consistency with Telecommunications Act of

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role and implement the program directly. Id.

1996, filed pursuant to Public Notice DA 98-2. Under Section 254 of the Act, local exchange carriers, whether predominantly rural or not, should be required to use the federal USF contributions to lower rates for basic local telephone service in high-cost areas rather than using those contributions to lower rates for other telephone services. If those carriers use the federal USF funding to lower access charges rather than basic local exchange rates, it would further exacerbate the affordability problem outlined in Section I of these comments and thus further violate the Act's requirement to preserve and advance universal service. Furthermore, even under the FCC's USF rules, long-distance service is clearly not intended to be supported by the federal USF at this time. Report and Order, paras. 56-87. As the funds in question are federal funds, the Commission can and should require them to be used to keep basic local exchange rates affordable. Any other use of the funds would be inconsistent with Section 254 of the Act.

WHEREFORE, the Attorney General of the State of New Mexico submits these comments for the Commission's consideration.

Respectfully submitted,

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RECEIVED
JUL 17 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PETITION FOR

RECONSIDERATION AND CLARIFICATION

OF

THE VERMONT PUBLIC SERVICE BOARD

AND

THE VERMONT DEPARTMENT OF PUBLIC SERVICE

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July 17, 1997

High Cost Modeling Project Standard FCC Model - BCPM per May 8 Order

7/7/97 15:42

Applies revenue benchmark on CBG basis
Need Allocation: 25% to Inter; 75% to Intra
Federal levy on interstate revenues only
Applies federal revenues to interstate jurisdiction only

Summary of Federal Effort	Rates	Support (B)
for Interstate Juris. =	4.33%	$ 2.8
for Intrastate Juris. =	0.00%	$ -
Total =	4.33%	$ 2.8

	From BCPM Model		Effect on Interstate Jurisdiction		Effect on Intrastate Jurisdiction									
	Need for Support		Federal Support		Federal Support						State Support			
			Federal Rate = 4.33%		Federal Charge Rate on Interstate Retail Revenue = 0.00%									
					Support		Net Gain or Loss							
	Total Need Amount (millions)	per Line per Month	Amount (millions)	per Line per Month	Amount (millions)	per Line per Month	Interstate Retail Revenues (millions)	Federal Pgm Surcharge Paid (millions)	Net Gain (millions)	per Line per Month	Support Amount (millions)	per Line per Month	Intrastate Retail Revenue (millions)	State Program Rate (percent)
Alabama	345.7	$ 12.37	86.4	$ 3.09	0.0	$ -	868	0.0	0.0	$ -	259.2	$ 9.28	1,500	17.3%
Arizona	181.7	$ 6.15	45.4	$ 1.54	0.0	$ -	1,232	0.0	0.0	$ -	136.3	$ 4.61	1,225	11.1%
Arkansas	295.9	$ 19.13	74.0	$ 4.78	0.0	$ -	526	0.0	0.0	$ -	221.9	$ 14.34	803	27.6%
California	500.1	$ 2.02	125.0	$ 0.51	0.0	$ -	6,322	0.0	0.0	$ -	375.1	$ 1.52	13,488	2.8%
Colorado	170.6	$ 5.83	42.6	$ 1.46	0.0	$ -	1,236	0.0	0.0	$ -	127.9	$ 4.37	1,465	8.7%
Connecticut	64.6	$ 2.65	16.2	$ 0.66	0.0	$ -	1,062	0.0	0.0	$ -	48.5	$ 1.99	1,406	3.4%
Delaware	16.7	$ 2.71	4.2	$ 0.68	0.0	$ -	237	0.0	0.0	$ -	12.5	$ 2.03	196	6.3%
District of Columbia	0.1	$ 0.01	0.0	$ 0.00	0.0	$ -	372	0.0	0.0	$ -	0.1	$ 0.01	409	0.0%
Florida	279.4	$ 2.41	69.8	$ 0.60	0.0	$ -	4,099	0.0	0.0	$ -	209.5	$ 1.80	5,860	3.6%
Georgia	356.4	$ 6.81	89.1	$ 1.70	0.0	$ -	2,065	0.0	0.0	$ -	267.3	$ 5.11	2,884	9.3%
Hawaii	25.9	$ 3.03	6.5	$ 0.76	0.0	$ -	269	0.0	0.0	$ -	19.4	$ 2.27	424	4.6%
Idaho	135.9	$ 18.08	34.0	$ 4.52	0.0	$ -	321	0.0	0.0	$ -	101.9	$ 13.56	329	30.9%
Illinois	298.0	$ 3.19	74.5	$ 0.80	0.0	$ -	2,701	0.0	0.0	$ -	223.5	$ 2.39	4,408	5.1%
Indiana	292.7	$ 7.34	73.2	$ 1.84	0.0	$ -	1,177	0.0	0.0	$ -	219.5	$ 5.51	2,070	10.6%
Iowa	264.8	$ 14.10	66.2	$ 3.52	0.0	$ -	629	0.0	0.0	$ -	198.6	$ 10.57	908	21.9%
Kansas	232.5	$ 12.92	58.1	$ 3.23	0.0	$ -	629	0.0	0.0	$ -	174.4	$ 9.69	904	19.3%
Kentucky	367.5	$ 15.36	91.9	$ 3.84	0.0	$ -	692	0.0	0.0	$ -	275.6	$ 11.52	1,381	20.0%
Louisiana	222.1	$ 7.85	55.5	$ 1.96	0.0	$ -	871	0.0	0.0	$ -	166.5	$ 5.88	1,552	10.7%
Maine	118.2	$ 12.77	29.5	$ 3.19	0.0	$ -	302	0.0	0.0	$ -	88.6	$ 9.58	439	20.2%
Maryland	84.9	$ 2.10	21.2	$ 0.53	0.0	$ -	1,414	0.0	0.0	$ -	63.6	$ 1.58	1,942	3.3%
Massachusetts	84.8	$ 1.66	21.2	$ 0.42	0.0	$ -	1,804	0.0	0.0	$ -	63.6	$ 1.25	2,594	2.5%
Michigan	341.4	$ 4.74	85.4	$ 1.19	0.0	$ -	1,776	0.0	0.0	$ -	256.1	$ 3.56	3,949	6.5%
Minnesota	288.4	$ 8.68	72.1	$ 2.17	0.0	$ -	1,075	0.0	0.0	$ -	216.3	$ 6.51	1,557	13.9%
Mississippi	272.5	$ 17.65	68.1	$ 4.41	0.0	$ -	529	0.0	0.0	$ -	204.4	$ 13.24	872	23.4%
Missouri	350.3	$ 9.48	87.6	$ 2.37	0.0	$ -	1,207	0.0	0.0	$ -	262.8	$ 7.11	1,869	14.1%
Montana	159.7	$ 27.13	39.9	$ 6.78	0.0	$ -	239	0.0	0.0	$ -	119.8	$ 20.35	304	39.5%
Nebraska	170.9	$ 14.52	42.7	$ 3.63	0.0	$ -	400	0.0	0.0	$ -	128.2	$ 10.89	688	18.6%
Nevada	77.0	$ 6.12	19.3	$ 1.53	0.0	$ -	1,710	0.0	0.0	$ -	57.8	$ 4.59	1,113	5.2%
New Hampshire	63.6	$ 7.00	15.9	$ 1.75	0.0	$ -	421	0.0	0.0	$ -	47.7	$ 5.25	419	11.4%
New Jersey	54.4	$ 0.76	13.6	$ 0.19	0.0	$ -	2,844	0.0	0.0	$ -	40.8	$ 0.57	3,345	1.2%
New Mexico	177.2	$ 17.29	44.3	$ 4.32	0.0	$ -	448	0.0	0.0	$ -	132.9	$ 12.96	513	25.9%
New York	376.9	$ 2.57	94.2	$ 0.64	0.0	$ -	4,964	0.0	0.0	$ -	282.7	$ 1.93	8,298	3.4%
North Carolina	442.2	$ 8.57	110.6	$ 2.14	0.0	$ -	1,781	0.0	0.0	$ -	331.7	$ 6.43	2,932	11.3%
North Dakota	116.6	$ 24.08	29.1	$ 6.02	0.0	$ -	177	0.0	0.0	$ -	87.4	$ 18.05	233	37.5%
Ohio	399.8	$ 5.15	99.9	$ 1.29	0.0	$ -	2,391	0.0	0.0	$ -	299.8	$ 3.86	4,791	6.3%
Oklahoma	283.5	$ 12.90	70.9	$ 3.23	0.0	$ -	725	0.0	0.0	$ -	212.6	$ 9.68	1,033	20.6%
Oregon	234.8	$ 10.44	58.7	$ 2.61	0.0	$ -	820	0.0	0.0	$ -	176.1	$ 7.83	1,051	16.7%
Pennsylvania	385.3	$ 4.12	96.3	$ 1.03	0.0	$ -	2,831	0.0	0.0	$ -	289.0	$ 3.09	4,171	6.9%
Rhode Island	15.0	$ 2.00	3.8	$ 0.50	0.0	$ -	269	0.0	0.0	$ -	11.3	$ 1.50	311	3.6%
South Carolina	241.0	$ 10.02	60.2	$ 2.51	0.0	$ -	893	0.0	0.0	$ -	180.7	$ 7.52	1,429	12.7%
South Dakota	133.1	$ 27.43	33.3	$ 6.86	0.0	$ -	192	0.0	0.0	$ -	99.8	$ 20.57	221	45.1%
Tennessee	323.3	$ 8.55	80.8	$ 2.14	0.0	$ -	1,257	0.0	0.0	$ -	242.5	$ 6.42	1,817	13.3%
Texas	811.6	$ 6.29	202.9	$ 1.57	0.0	$ -	3,743	0.0	0.0	$ -	608.7	$ 4.71	6,873	8.9%
Utah	78.8	$ 6.57	19.7	$ 1.64	0.0	$ -	457	0.0	0.0	$ -	59.1	$ 4.93	505	11.7%
Vermont	56.7	$ 12.49	14.2	$ 3.12	0.0	$ -	199	0.0	0.0	$ -	42.5	$ 9.37	193	22.1%
Virginia	296.7	$ 5.86	74.2	$ 1.47	0.0	$ -	1,871	0.0	0.0	$ -	222.5	$ 4.40	2,473	9.0%
Washington	232.7	$ 5.84	58.2	$ 1.46	0.0	$ -	1,416	0.0	0.0	$ -	174.5	$ 4.38	2,004	8.7%
West Virginia	237.2	$ 21.00	59.3	$ 5.25	0.0	$ -	384	0.0	0.0	$ -	177.9	$ 15.75	606	29.3%
Wisconsin	274.8	$ 7.30	68.7	$ 1.83	0.0	$ -	1,041	0.0	0.0	$ -	206.1	$ 5.48	1,856	11.1%
Wyoming	86.4	$ 25.61	21.6	$ 6.40	0.0	$ -	159	0.0	0.0	$ -	64.8	$ 19.21	152	42.8%
Total	11,320		2,830		-		65,305	-	-		8,490		101,770	
Maximum Value		$ 27.43		$ 6.86		$ -				$ -		$ 20.57		45.1%
Minimum Value		$ 0.01		$ 0.00		$ -				$ -		$ 0.01		0.0%
Weighted Average		$ 5.78		$ 1.44		$ -				$ -		$ 4.33		8.3%

Attachment A